

SHIRLEY POMERINKE

IBLA 83-450

Decided July 18, 1983

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 41862 through I MC 41871.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter in the proper office of BLM. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with

the statute, or to afford claimants any relief from the statutory consequences.

3. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Shirley Pomerinke, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Shirley Pomerinke appeals the Idaho State Office, Bureau of Land Management (BLM), decision of February 22, 1983, which declared the unpatented Missionary 1A through 4A, and Missionary 5 through 10 lode mining claims, I MC 41862 through I MC 41871, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM prior to December 31, 1980, and December 31, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2. Proofs of labor for both 1980 and 1981 were submitted to BLM March 4, 1983, with the appeal.

Appellant states that the annual assessment work has been performed every year and recorded in Idaho County, Idaho. She does not suggest that copies of the proofs of labor were transmitted to BLM timely.

The proofs of labor submitted with the appeal show that they were recorded in Idaho County, Idaho, on August 25, 1980, and October 19, 1981, respectively.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim or evidence of the performance of assessment work on the claim in the county where the location notice is recorded and in the proper office of BLM by October 22, 1979, and on or before December 30 of every calendar year thereafter. This requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

[2] The Board responded to arguments similar to those presented here in Lynn Keith, *supra*. With respect to the conclusive presumption of abandonment and appellant's argument that the intent not to abandon was manifest, we stated:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the

regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

[3] Those who deal with the Government are presumed to have knowledge of the law and the regulations duly promulgated thereunder. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976). The responsibility for complying with the recordation requirements rested with appellant. This Board has no authority to waive or excuse failure to comply with the statutory requirements. Lynn Keith, *supra*.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge